

## FAQS – Investing in Mexican Real Estate

**Procopio, Cory, Hargreaves & Savitch LLP**

*Intelligent Legal Solutions*

	Page
• How can I take title to Mexican real estate in the "prohibited" coastal zone?.....	3
• What is a Mexican <i>fideicomiso</i> ?.....	3
• What is the Calvo Clause and Why Must I Agree to it when Investing in Mexican Real Estate? .....	4
• Is there such a thing as a standard form residential purchase and sale contract for Mexican real estate (such as the California Residential Purchase Agreement and Joint Escrow Instructions)?.....	4
• Do I have to file Mexican income tax returns as a U.S. investor in Mexican coastal real estate if I rent the properties? Can I obtain a foreign tax credit in the U.S. for Mexican income taxes paid? .....	4
• Are there any U.S. or Mexican tax risks or downside if I purchase the shares of a Mexican company that itself is the owner of Mexican real estate?.....	4
• How does Mexico's value added tax ("IVA") apply to my Mexican rental property? Can I obtain a foreign tax credit in the U.S. for Mexican value added taxes paid?.....	5
• Are there any U.S. information reporting requirements with respect to a U.S. investor's ownership of Mexican real estate? .....	5
• What are my US reporting obligations with regards to the Mexican <i>fideicomiso</i> ?.....	5
• I have a friend or family member who wants to invest in my Mexican real estate which is currently held in a Mexican <i>fideicomiso</i> . Can I not just transfer a beneficiary interest in the Mexican <i>fideicomiso</i> free from U.S. and Mexican taxes?.....	5
• I am a U.S. citizen, lawful permanent resident or other permanent domicile of the U.S.. Does the U.S. gift and estate tax regime apply to gift transfers (or transfers at death) of the Mexican real estate owned by a Mexican <i>fideicomiso</i> , an SA or an SRL?.....	6
• But won't my Mexican <i>fideicomiso</i> , at least allow me to defer any U.S. estate taxes upon my death, until my spouse also dies? .....	6
• I am a U.S. citizen. I was told that if I sell Mexican real estate owned by a Mexican <i>fideicomiso</i> , or through a Mexican company (e.g., an SA or an SRL) that there is no U.S. income tax since the property is located outside of the U.S. Is this true? If Mexican income tax is paid on the sale, does U.S. tax also apply?.....	6
• Can I obtain the U.S. capital gains rates from the sale of Mexican real estate owned by a Mexican <i>fideicomiso</i> , or through a Mexican company (e.g., an SA or an SRL)? .....	7

- Does State income tax apply (e.g., California, Illinois, New York, etc.) if I sell Mexican real estate owned by a Mexican *fideicomiso*, or through a Mexican company (e.g., an SA or an SRL)? ..... 7
- I was told that Mexican tax law provides for an annual adjustment for inflation of the tax basis of the Mexican real estate owned by a Mexican *fideicomiso*, or through a Mexican company (e.g., an SA or an SRL) thereby reducing the taxable gain from the sale. How does this work? Does this also reduce the taxable gain for U.S. tax purposes?..... 8
- The seller of the Mexican real property wants to record a lower value than the actual purchase price I am willing to pay. Is this permitted under the law? If so, is there any future tax risks or liabilities to me from structuring the transaction in this fashion..... 8
- What States within the United Mexican States have income taxes and how do they apply to my proposed purchase of Mexican real estate? ..... 8
- What is the *Catastro* and why is it important to me regarding Mexican real estate?..... 8
- How is the State Public Registry of Property and Commerce (*Registro Publico de la Propiedad y Comercio*) different from the *Catastro* and what is its function?..... 9
- The broker is insisting I make a non-refundable deposit on the purchase of Mexican real estate, is this advisable and what are the risks? ..... 9
- Why can I not locate a Mexican escrow company to hold deposit funds and take the proceeds for the purchase of the Mexican real estate? Are Mexican escrows regulated? ..... 9
- What is the typical closing time required for my purchase of Mexican real estate? ..... 9
- Are there typical encumbrances under Mexican law that I should be concerned about regarding my proposed purchase of Mexican real estate?..... 9
- Does Mexico have different type of deeds (e.g., Warranty Deed, Grant Deed, Quitclaim Deed)?..... 9
- Can I take title to the Mexican real property as *joint tenants*, *tenants in common* or as *community property*?..... 10
- Will a U.S. probate proceeding and/or a U.S. court order be required to transfer the rights in the Mexican *fideicomiso* to me and my siblings upon the death of my parents (who are the beneficiaries of the Mexican *fideicomiso*)? ..... 10
- Can I name my U.S. family living trust as a successor beneficiary of the Mexican real estate that is held in a Mexican *fideicomiso*? Why does the Mexican notary attorney not respect the terms forth in my family revocable trust formed under the laws of a particular State within the U.S.?..... 10

## FAQS – Investing in Mexican Real Estate

**Procopio, Cory, Hargreaves & Savitch LLP**

*Intelligent Legal Solutions*

The answers to the following frequently asked questions “FAQs” are designed to help the reader have a better understanding of the legal and tax issues associated with the purchase, use and eventual sale of Mexican real estate. Its summary nature necessarily means that it should and cannot be used as a substitute for specific legal or tax advice for a particular transaction.<sup>1</sup>

- **How can I take title to Mexican real estate in the "prohibited" coastal zone?**

A non-Mexican citizen cannot own fee simple title of Mexican real estate in the “prohibited” zone (50 kilometers along the coast and 100 kilometers along the international borders). A U.S. or Canadian investor can generally acquire ownership of Mexican real estate as through a Mexican company (e.g., a *Sociedad Anónima* ("SA") or *Sociedad de Responsabilidad Limitada* ("SRL") provided the real estate is commercially rented and not for personal use. The SA or SRL can own the Mexican real estate in these circumstances. Personal use Mexican real estate can be acquired through a Mexican trust (*fideicomiso*) where the U.S. or Canadian investor is both the settlor of the funds used to purchase the real estate and a beneficiary of the *fideicomiso* owning the property.

- **What is a Mexican *fideicomiso*?**

A Mexican *fideicomiso* can be a Mexican residential real estate trust which allows for personal use of the Mexican real estate by As an overview, it is worth identifying the common terminology of U.S. (and Canadian) trusts contrasted with Mexican *fideicomisos*/trusts in summary form below:

<b>Common Law (U.S. &amp; Canadian) Terms</b>	<b>Mexican Terms (“Equivalent”)</b>
Trust	<i>Fideicomiso</i>
Settlor, Grantor or Trustor	<i>Fideicomitente</i>
Beneficiary	<i>Beneficiario, Fideicomisario</i>
Trustee, Fiduciary	<i>Fiduciario</i>

Generally, there are three parties to a Mexican private trust/ *fideicomiso*: the Settlor, the Trustee and the Beneficiary(s). Any U.S. or Canadian individual or entity may be a Beneficiary under the trust, as long as the Beneficiary has the legal capacity to receive the benefits (usually income, principal or a combination thereof) from the trust. The Settlor may be any individual or entity (U.S. or Canadian), provided the individual or entity has the legal capacity to transfer the property into the trust.

As discussed by the Mexican Supreme Court, the Mexican trust was modeled after the U.S. trust.<sup>2</sup> A trust is created under Mexican Law with a written instrument between the Settlor and the Trustee, who must be a financial institution authorized under Mexican Law to act as Trustee.<sup>3</sup> The Settlor transfers property to the Trustee, who holds title to the property in trust and manage the property on behalf of the Beneficiary.

<sup>1</sup> This simplification necessarily means that many details associated with the tax consequences of these transactions can not be discussed in this FAQs. See, Martin & Hernandez-Pulido, *How Do you Say “FIRPTA” In Spanish? A Comparative International Tax Analysis for Foreign Investors of U.S. & Mexican Real Estate*. The most recent version of this article can be viewed at - <http://www.procopio.com/publications/pdfs/FIRPTA.pdf>.

<sup>2</sup> See, Supreme Court decision: “*Fideicomiso, naturaleza del*”, *Sala Auxiliar, Séptima Epoca, Semanario Judicial de la Federación*, p. 39.

<sup>3</sup> Section 385, *Ley General de Títulos y Operaciones de Crédito (LGTOC)*.

- **What is the Calvo Clause and Why Must I Agree to it when Investing in Mexican Real Estate?**

Non-Mexicans can acquire interests in Mexican real estate in the prohibited zone, as explained above, but do so through concessions (the right to acquire domain over land, waters and subsoil) granted by the Mexican government. A condition of foreign ownership is that the foreign investor must agree before the *Secretaría de Relaciones Exteriores* or SRE (Secretary of Foreign Relations) to be treated as a Mexican in connection with the Mexican real estate assets. This means, among other things, the foreign investor may not invoke the protection of their own governments in connection with Mexican real estate, under the penalty of forfeiting the assets they have acquired in favor of the Mexican state. This agreement is known as the “Calvo Clause” (*Cláusula Calvo*) or Barren Clause, named after Argentinean jurist Carlos Calvo.

- **Is there such a thing as a standard form residential purchase and sale contract for Mexican real estate (such as the California Residential Purchase Agreement and Joint Escrow Instructions)?**

Currently, there are no standard form residential purchase and sale agreements which have been developed that are commonly used in the industry. The purchase and sale agreement is one of, if not the most crucial, contractual agreement related to the purchase or sale of any Mexican real estate and should be carefully drafted and understood by both the buyer and seller.

- **Do I have to file Mexican income tax returns as a U.S. investor in Mexican coastal real estate if I rent the properties? Can I obtain a foreign tax credit in the U.S. for Mexican income taxes paid?**

Yes. Generally, you will have a Mexican income tax filing requirement for rental income generated from Mexican rental property. If the owner of the property is a Mexican fideicomiso, you should be able to obtain a foreign tax credit in the U.S. for the Mexican income taxes paid. However, if the owner is a Mexican *Sociedad Anónima* ("SA") you as an individual shareholder will not be able to obtain a foreign tax credit and will eventually be subject to double taxation from the rental income. If the owner of the Mexican real estate is a Mexican *Sociedad de Responsabilidad Limitada* ("SRL"), you as an individual owner **may** be able to obtain a foreign tax credit and avoid double taxation from the rental income depending upon how the SRL is structured for U.S. tax purposes.

- **Are there any U.S. or Mexican tax risks or downside if I purchase the shares of a Mexican company that itself is the owner of Mexican real estate?**

The purchase of stock of a Mexican company can have significant future U.S. and Mexican income tax costs. A U.S. purchaser (whether an individual, a trust or a company) will generally only obtain tax basis in the shares and not the underlying real estate. This means that upon the Mexican company's sale of the real estate, the taxable gain (both in Mexico and the U.S.) will be greater than if the purchase of the real estate was made directly. Additionally, by purchasing the shares of the company you will be assuming (at least indirectly) all of the liabilities and obligations of the Mexican company (e.g., labor claims, past taxes, contractual obligations, etc.). An important aspect of the corporate régime in Mexico is that liabilities of the shareholders are limited to the amount of paid-in capital that they contributed to such company, that is, no “piercing the corporate veil” or “alter ego” regime exists. Shareholders are only responsible for company debts, including tax contingencies, up to the capital contribution they make and only if the patrimony of the company itself is not sufficient to satisfy those claims.

When investing in real estate through a structure that involves ownership of a Mexican company, one important aspect that must be taken into consideration is that under Mexican law, the employees of such company are entitled to a certain percentage of the annual profits (e.g., 10%) generated by the Mexican company. In general terms, the amount of the employees profit sharing is equal to a percentage of the

net profits of the company that is determined by a joint committee made up by labor and governmental representatives.

- **How does Mexico's value added tax ("IVA") apply to my Mexican rental property? Can I obtain a foreign tax credit in the U.S. for Mexican value added taxes paid?**

You as an individual shareholder or owner of an SA, SRL or through a Mexican fideicomiso will not be able to obtain a foreign tax credit of Mexico's value added tax (IVA), since it is not an income tax available for the foreign income tax credit under U.S. tax law. The IVA can be deducted when calculating the U.S. tax liability.

The IVA is a consumption tax levied against most all goods and services (including rents, services, etc.). It applies to any individual or entity that in Mexican performs certain types of activities, which include the rental of real estate, including time sharing. The IVA generally consists of a 15% surcharge upon the ordinary retail price of the activity performed, i.e. such a percentage upon the rental price of the real estate property, except where the property is located in certain regions where a 10% rate applies.

There are special provisions for the rental of residential real estate not used as a hotel or housing lodge, that exempts such activity from IVA tax. Notwithstanding the above, the provision only applies for unfurnished residential real estate. If furniture is provided the general tax rate (15 or 10 percent) will apply to the whole consideration/rent paid, even if separate contracts are executed for the rental of the real property and the rental of the furniture. The IVA regulations specifically address this scenario.

The individual or entity paying for the rent, must withhold the whole amount of the IVA at the moment of payment (in the case of a foreign resident, be it an individual or an entity, that directly rents out Mexican real estate property).

- **Are there any U.S. information reporting requirements with respect to a U.S. investor's ownership of Mexican real estate?**

Yes. The particular information reporting requirement(s) will depend on the structure through which title to the property is held and other facts and circumstances. The U.S. informational reporting requirements apply in addition to calculations of taxable income. They specifically apply to Mexican real estate owned by Mexican companies – SAs, SRLs and entities such as *fideicomisos*, etc. The current U.S. tax law, allows the IRS to assess severe monetary penalties for failures to timely comply with the information reporting requirements.

- **What are my US reporting obligations with regards to the Mexican fideicomiso?**

Gratuitous transfers by U.S. persons to foreign trusts - (e.g., creation of foreign trust) must be reported by the transferor on IRS Form 3520. This form is filed in years where reportable transactions take place, annually by U.S. persons treated as owners, and in years when distributions are received. The failure to file Form 3520 results in a penalty equal to 35% of the reportable amount, with additional \$10,000 penalties for continued failure after notice from the IRS. The IRS' position is that Mexican *fideicomisos* are foreign trusts for purposes of this reporting requirement. This reporting requirement is the U.S. taxpayer's obligation, which also includes annual filings of IRS Form 3520-A.

- **I have a friend or family member who wants to invest in my Mexican real estate which is currently held in a Mexican fideicomiso. Can I not just transfer a beneficiary interest in the Mexican fideicomiso free from U.S. and Mexican taxes?**

First of all, it is important to note that under Mexican law, whenever real estate property is being rented through a fideicomiso, all profits derived are generally attributed to the settlor of the trust for U.S. income

tax purposes. This is also the general rule for Mexican tax purposes, except where the trust is irrevocable.

Secondly, under Mexican tax law the fiduciary institution is in charge of computing the taxes derived from the real estate operations of the *fideicomiso*. The Mexican trustee makes this determination with respect to all of the settlors or beneficiaries, as the case may be. The settlors or beneficiaries of the trust will generally be individually liable for income taxes upon the real estate profits derived in the trust, regardless of any internal arrangements they might have reached. In other words, even if an agreement was in effect whereby one beneficiary transferred its beneficiary interest to another party under an agreement where the latter was entitled to a contractually calculated tax free amount, for Mexican tax purposes, such transferee would be the taxpayer and it would simply treat the taxes pertaining to the transferee as paid by the transferor. This can have particularly adverse tax consequences.

- **I am a U.S. citizen, lawful permanent resident or other permanent domicile of the U.S.. Does the U.S. gift and estate tax regime apply to gift transfers (or transfers at death) of the Mexican real estate owned by a Mexican *fideicomiso*, an SA or an SRL?**

Yes. The U.S. estate and gift tax regime applies to the worldwide assets of a U.S. citizen, lawful permanent resident or domicile. A gift transfer of a beneficial interest in a Mexican *fideicomiso* will likely be subject to the U.S. gift tax, unless the transfer is made between two U.S. citizen spouses. Similarly, a gift of shares in an SA or ownership interest in an SRL will be subject to the U.S. gift tax (subject to the annual exclusion amounts of \$12,000 and the lifetime exclusion amount of US\$ 1 million).

Similarly, if a U.S. citizen or domiciled person of the U.S. does with an ownership interest in a Mexican *fideicomiso* or Mexican company, the value of that Mexican real property interest will be subject to U.S. estate or generation skipping transfer taxes.

- **But won't my Mexican *fideicomiso*, at least allow me to defer any U.S. estate taxes upon my death, until my spouse also dies?**

It is rare to find any Mexican *fideicomiso* instrument which contemplates U.S. estate taxes between spouses and anticipates the application of these taxes for the Mexican real estate interest. Accordingly, each investor should contemplate and understand the best structure for their particular family to avoid and defer U.S. gift, estate and generation skipping transfer taxes to the extent legally possible.

- **I am a U.S. citizen. I was told that if I sell Mexican real estate owned by a Mexican *fideicomiso*, or through a Mexican company (e.g., an SA or an SRL) that there is no U.S. income tax since the property is located outside of the U.S. Is this true? If Mexican income tax is paid on the sale, does U.S. tax also apply?**

U.S. citizens (resident aliens and lawful permanent residents - i.e., green card holders) are subject to U.S. income tax on their worldwide income. A sale of Mexican real estate by a Mexican *fideicomiso* will generate U.S. taxation on the gain recognized and realized by applying U.S. tax principles. Any Mexican income tax paid from the sale may be available for a credit against the U.S. income tax, reducing the total U.S. tax burden on a "dollar for dollar" basis.

In addition to the U.S. tax consequences, there are also generally Mexican income taxes generated from the sale or transfer of the Mexican real estate interest held in the Mexican *fideicomiso* or Mexican company, SA, SRL, etc. Persons dealing with Mexican real estate are also subject to Mexican taxation because any real estate interest is Mexican source income under Mexican tax law. Mexico has a one tier corporate tax system or integrated corporate tax where there is no tax on dividends paid from previously taxed earnings. This is distinct from the U.S. taxation system of "C" corporations.

The corporate income tax rate in Mexico is currently 28 percent and the highest marginal tax rate for individuals is 28 percent. Income tax in Mexico is determined and paid on an annual basis with monthly provisional payments that are credited against the final yearly tax. Mexico has a withholding tax regime applicable to foreign sellers upon the sale of the Mexican real estate. This withholding tax rate is generally 25 percent upon the gross income and is generally NOT reduced under applicable tax treaties, such as the ones in force with both the U.S. and Canada. There is a special rule of Article 13 of the U.S.-Mexico Income Tax Treaty, which has caused much confusion in the marketplace. In short, a U.S. seller of stock of a U.S. entity which is the owner of Mexican real estate may be able to avoid Mexican income tax on the sale of the “shares.” However, this usually only causes worse tax problems for the buyer – since he or she will not receive tax basis in the underlying real estate (neither for Mexican or U.S. tax purposes in most cases). The effect - the buyer ends up paying the Mexican tax of the seller. Plus, the seller as a U.S. person must pay U.S. tax on the sale without any foreign tax credit to off-set the tax. A little explanation is helpful.

This is especially relevant in light of a U.S. District Court case where a U.S. judge recently ruled that a sale of “stock” of a U.S. company, as beneficiary of a Mexican real estate trust (*fideicomiso*) was taxable in Mexico.<sup>4</sup> This situation requires careful planning by the U.S. investor to avoid unexpected double taxation.

- **Can I obtain the U.S. capital gains rates from the sale of Mexican real estate owned by a Mexican *fideicomiso*, or through a Mexican company (e.g., an SA or an SRL)?**

The exact structure a U.S. citizen or Canadian resident uses for their Mexican real estate investments is crucial, since the tax consequences of future rental income or a future sale can be wildly different depending upon the type of legal structure. A Mexican *fideicomiso*, for instance, is taxed very differently from a SA to the U.S. investor. The SA is necessarily taxed as a C corporation and subject to double taxation. Any Mexican income tax paid from the sale by an SA will necessarily not be available to credit against the U.S. shareholder’s taxable income. A corporate seller does not receive the lower 15 percent capital gains rate and would typically be subject to a 34 percent corporate rate. Accordingly, preferential U.S. capital gains rates of 15 percent are never available for Mexican real estate invested through an SA.

For a U.S. individual, if the Mexican real estate is held in a Mexican *fideicomiso* and is a “capital asset,” then the U.S. individual beneficiary will be taxed at the 15 percent rate (in the U.S.) applicable to capital gains if the property is sold after being held for at least 12 months. This tax can generally be off-set and credited by the Mexican income tax paid upon the sale (at 28 percent rate). If the property is not a capital asset, the U.S. beneficiary could be taxed at up to a 35 percent rate in the U.S., depending upon the highest marginal tax rate of the U.S. individual. An SRL structure can also enable the U.S. investor to obtain capital gains treatment if properly structured. Accordingly, the ownership structure (how the property is acquired initially) can enable the investor to have significant tax savings upon the ultimate sale of the property.

- **Does State income tax apply (e.g., California, Illinois, New York, etc.) if I sell Mexican real estate owned by a Mexican *fideicomiso*, or through a Mexican company (e.g., an SA or an SRL)?**

Residents of States within the U.S. must analyze their particular State’s income tax laws. California residents, for example are subject to California income taxation on their worldwide income. Any Mexican income tax paid from the sale by a California resident, is not eligible for a credit against California income taxes.

---

<sup>4</sup> *Randolph D. Gale, et al, v. Alan G. Carnrite, et al.* United States District Court, Southern District of Texas, Houston Division, May 2007. The U.S. federal court concluded, as a matter of law (i.e., Mexican law) that the “stock” sale was subject to Mexican income taxation, irrespective of the U.S. tax consequences of the transfer.

- **I was told that Mexican tax law provides for an annual adjustment for inflation of the tax basis of the Mexican real estate owned by a Mexican *fideicomiso*, or through a Mexican company (e.g., an SA or an SRL) thereby reducing the taxable gain from the sale. How does this work? Does this also reduce the taxable gain for U.S. tax purposes?**

Mexican tax law does indeed provide for an annual adjustment for inflation of the tax basis of the Mexican real estate (unlike the U.S. tax law which does not provide for any inflation adjustments). In short, an annual inflation adjustment is made according to the government published inflation rates. This enables the seller to have a lower taxable gain upon the sale of the real estate. For instance, if the original/historical price for a piece of Mexican real estate was US\$1,000, and the annual inflation rate was 7 percent, the new tax basis after one year would be \$1,070 and so forth and so on. This inflation adjustment reduces the Mexican taxable gain. However, these inflation adjustments have no impact when calculating the U.S. taxable gain. In this example, the U.S. seller will have a tax basis of US\$1,000 when calculating the U.S. taxable gain, even though over time she might have a Mexican tax basis of \$3,500 (with annual inflation adjustments over time).

- **The seller of the Mexican real property wants to record a lower value than the actual purchase price I am willing to pay. Is this permitted under the law? If so, is there any future tax risks or liabilities to me from structuring the transaction in this fashion.**

This is an ugly tradition that has existed in much of the Mexican real estate market for some decades. This can be a tax fraud, whereby both the seller and the buyer can be liable under Mexican tax law. This is not advisable for many reasons. The economic impact to the buyer, who accommodates the seller's reduction and false recordation of the purchase and sales price, is that he will likely be paying the seller's Mexican income tax upon the future sale of the real estate. In other words, if the purchase price is US\$1,000, but only a \$500 amount is recorded, the \$500 gain which is not taxed to the seller will be taxed to the buyer when he sells the property in the future. The Mexican real estate marketplace is rapidly changing in this respect as the Mexican government authorities are becoming more sophisticated and aggressive regarding ways to detect these type of transactions.

- **What States within the United Mexican States have income taxes and how do they apply to my proposed purchase of Mexican real estate?**

None of the thirty-one Mexican States have their own separate income taxation system (which is not tied to the federal government's income tax regime). This means that there are not separate Mexican State income taxes on the rental or sale of Mexican real estate.

- **What is the *Catastro* and why is it important to me regarding Mexican real estate?**

The Municipal Property Office (*Catastro*) deals primarily with technical aspect of real property, such as measurements, tax codes, mergers, subdivisions, property taxes, etc.. The *Catastro* is often confused with the State Public Registry of Property and Commerce (*Registro Publico de la Propiedad y Comercio*) which is a State agency which registers property deeds and reflects titles of ownership.

The purpose of the *Catastro* agency is to provide the government and individuals with accurate descriptions and information about the existing real estate in Mexico, specifically about the applicable urban development planning. The *Catastro* does not by itself constitute proof of ownership for a specific property, rather it may only provide an indication of ownership.

It is important not to assume that title is duly registered just because it has a Municipal Tax code and is filed at the *Catastro* agency, or in the Surveyors office, under any name. This is a technical matter and has little (or nothing) to do with legal ownership of the property. Title should be registered in the State Public Registry of Property and Commerce (*Registro Publico de la Propiedad y Comercio*).

- **How is the State Public Registry of Property and Commerce (*Registro Publico de la Propiedad y Comercio*) different from the *Catastro* and what is its function?**

The State Public Registry of Property and Commerce (SPRPC) is the public entity in charge of making public, i.e. to third parties, the legal acts that require public notification for them to have full legal effect vis-à-vis the parties that were not directly involved in a particular transaction (including real estate transactions) or act. Filings before this registry is particularly relevant for real property, since applicable Mexican law sets forth that any transfer of real estate will be effective vis-à-vis third parties after the corresponding transaction has been duly filed. For this purpose, Mexican law provides that any transfer of real property must be formalized before a public notary, (i) obtain a “no-lien certificate” from the SPRPC and then, once the certificate has been obtained and the corresponding transaction has been executed between the parties, (ii) file before the SPRPC registry the corresponding preliminary notice publicizing the transaction and (iii) file the definitive deed. There are important timing requirements for these filings, which will determine at what point in time the real property transaction will be effective vis-à-vis third parties.

- **The broker is insisting I make a non-refundable deposit on the purchase of Mexican real estate, is this advisable and what are the risks?**

The Mexican real estate sales and broker community is not a regulated profession in Mexico like in most States in the United States. It is almost never advisable to make a non-refundable deposit with any real estate sales broker, agent, the seller of the real estate, or a Mexican attorney, until after the buyer understands the Mexican real property which is being purchased and the terms and conditions under which it is being purchased.

- **Why can I not locate a Mexican escrow company to hold deposit funds and take the proceeds for the purchase of the Mexican real estate? Are Mexican escrows regulated?**

There is no such thing as an escrow under Mexican law. It is not a regulated industry in Mexico and largely does not exist as it is understood in the U.S. It is not uncommon, and sometimes advisable, for U.S. escrows to be used regarding the purchase and sale of Mexican real estate, to enable the parties to have the funds placed with a third party who is not interested in the closing of the Mexican real estate transaction.

- **What is the typical closing time required for my purchase of Mexican real estate?**

Closings can be quite time consuming relative to the U.S. A well managed real estate development project can sometimes enable the buyer to close within 60-90 days, but more often a closing will require several months.

- **Are there typical encumbrances under Mexican law that I should be concerned about regarding my proposed purchase of Mexican real estate?**

There are a host of potential Mexican encumbrances and liens that should be addressed by any investor of Mexican real estate. These include, but are not limited to tax liens, mortgage encumbrances, and other creditors liens and encumbrances. These encumbrances may, but are not necessarily always, recorded in the SPRPC.

- **Does Mexico have different type of deeds (e.g., Warranty Deed, Grant Deed, Quitclaim Deed)?**

No. Mexico does not provide the same type of title and implied warranties of each of the above deeds used in different jurisdictions in the U.S. It is important for buyers of Mexican real estate to obtain the

greatest contractual rights (including rights associated with any Mexican deed) to help protect them as part of any real estate transaction.

- **Can I take title to the Mexican real property as *joint tenants, tenants in common* or as *community property*?**

Mexico does not recognize the same type of real estate ownership as exists in the U.S., such as joint tenants, tenants in common or community property. If individual investors were married in the U.S. or Canada, and reside in those countries, their ownership rights in Mexican real estate will be partially determined by Mexican law and the applicable law of residency. For instance, a California resident couple who have lived all of their lives in California (without a prenuptial or postnuptial agreement) will likely have community property rights associated with their Mexican real estate investment (assuming community property funds are used to purchase the property), while Mexican law will provide no particular acknowledgement or benefit if the Mexican *fideicomiso* or title reflects only one of the spouses as owner/beneficiary. This is just one example, of many, where there will be a conflicts in law regarding the rights in the Mexican real estate.

- **Will a U.S. probate proceeding and/or a U.S. court order be required to transfer the rights in the Mexican *fideicomiso* to me and my siblings upon the death of my parents (who are the beneficiaries of the Mexican *fideicomiso*)?**

Unfortunately, ill-planned Mexican real estate investments can cause and require significant future legal work and legal proceedings to the heirs associated with the Mexican real estate upon the death of the U.S. beneficiary(s) of the Mexican *fideicomiso*. For instance, a U.S. probate court might be required to grant an order under an ancillary probate proceeding in the U.S., to transfer Mexican real estate held in a *fideicomiso* if successor beneficiaries are not named in the *fideicomiso* instrument. The Mexican trustee will generally never designate successor beneficiaries which are merely identified in a U.S. Will, without a probate proceeding and a U.S. court order (which must then be recognized under Mexican law).

- **Can I name my U.S. family living trust as a successor beneficiary of the Mexican real estate that is held in a Mexican *fideicomiso*? Why does the Mexican notary attorney not respect the terms forth in my family revocable trust formed under the laws of a particular State within the U.S.?**

It is possible to minimize (or at least defer) U.S. estate taxes, if the ultimate beneficiary of the Mexican real estate is a U.S. family living trust. Unfortunately, if this is not done correctly, a Mexican notary attorney or Mexican court may not respect the terms or existence of the U.S. family living trust.